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No. 238

## United States District Court of the Northern District of California

October Term, 1921.

UNION TRUST COMPANY OF SAN FRANCISCO AND  
ALBERT LACHMAN, AS TRUSTEES OF THE LAST  
WILL AND TESTAMENT OF HENRIETTA S. LACHMAN;  
DECEASED, PLAINTIFFS IN ERROR.

VERSUS  
JAMES S. WARDEN, COLLECTOR OF INTERNAL REVENUE  
FOR THE FIRST DISTRICT OF CALIFORNIA,  
AND JOHN L. KELLY, UNITED STATES COLLECTOR  
OF INTERNAL REVENUE FOR THE FIRST DISTRICT  
OF CALIFORNIA.

IN ERROR TO DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF CALIFORNIA.

APPEAL OF DECREE OF DEFENDANTS IN ERROR.

U. S. DEPT. OF JUSTICE

# In the Supreme Court of the United States.

OCTOBER TERM, 1921.

UNION TRUST COMPANY OF SAN FRANCISCO and Albert Lachman, as executors of the last will and testament of Henriette S. Lachman, deceased, plaintiffs in error,

v.

JUSTUS S. WARDELL, COLLECTOR OF INTERNAL REVENUE for the first district of California, and John L. Flynn, United States collector of internal revenue for the first district of California.

No. 236.

IN ERROR TO DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF ON BEHALF OF DEFENDANTS IN ERROR.

## STATEMENT OF THE CASE.

This case was decided by the court below on demurrer in favor of the defendants. The material facts set forth in the complaint are: That on May 31, 1901, Henriette S. Lachman was the owner of 7,475 shares of the capital stock of the S. and H. Lachman Estate, a corporation; and on that day the said Hen-

riette S. Lachman executed and delivered to Albert Lachman and Henry Lachman, her sons, the following instrument, to wit:

To Albert Lachman and Henry Lachman, my sons:

This is to certify that I have delivered to you seven thousand four hundred and seventy-five (7,475) shares of the capital stock of the S. & H. Lachman Estate, represented by certificates numbers eleven (11), twelve (12) and thirteen (13) respectively, however, upon the following trust:

To pay to me during my lifetime, all the income earned and derived therefrom, and, upon my death, to deliver two thousand four hundred and ninety (2,490) shares, represented by certificate number eleven (11) unto Henry Lachman, thenceforth for his absolute property; two thousand four hundred and ninety-five (2,495) shares, represented by certificate number thirteen (13) unto Albert Lachman, thenceforth for his absolute property; and yourselves, to-wit, Albert Lachman and Henry Lachman, to hold two thousand four hundred and ninety (2,490) shares, represented by certificate number twelve (12) upon my death, in trust, paying the income derived therefrom unto my daughter, Rebecca, wife of Leo Metzger, and upon the death of my said daughter, the income and earnings derived from said two thousand four hundred and ninety (2,490) shares shall be held, or expended, by you, according to your judgment, for the benefit of my grandchildren, the children of my said

daughter; Rebecca Metzger, and upon the youngest of said children attaining the age of majority, all the then surviving children of my said daughter, Rebecca Metzger, shall be immediately entitled to said two thousand four hundred and ninety (2,490) shares in equal proportions;

that immediately upon the execution and delivery of said instrument Henriette S. Lachman assigned and delivered to the said trustees the said shares of stock of which they then became the owner; that on the 10th day of July, 1915, the said Henry Lachman died, leaving a will bequeathing his estate to Henriette S. Lachman by which the 2,490 shares of stock which belonged to said Henry Lachman were returned to said Henriette S. Lachman; that on July 13, 1914, Rebecca Metzger died, leaving three children; that on the 14th day of November, 1916, the said Henriette S. Lachman died, leaving property which, including the 2,490 shares of stock returned to her under the will of Henry Lachman, was of the value of \$302,963.64; that the defendants demanded and collected of plaintiffs the sum of \$12,164.07 as an estate tax upon the said shares of stock of the S. and H. Lachman Estate, represented by the certificates which had been issued to Albert Lachman and Rebecca Metzger, and the officials of the Internal Revenue Bureau having refused to return said sum, this action was brought to recover same. (R. 2 to 9.)

The insistence of the defendants in error is that the said instrument of May 31, 1901, created a trust

to take effect in possession and enjoyment at and after the death of the said Henriette Lachman. This contention was sustained by the court below and a judgment entered accordingly. (R. 15, 16.)

It is believed that all the questions presented in this case and ably discussed by counsel representing plaintiffs in error have been considered in the brief and argument filed on behalf of defendant in error in the case of *Schwab v. Doyle*, No. 200 on this court's docket, and that argument will not be repeated here.

JAMES M. BECK,

*Solicitor General.*

J. A. FOWLER,

*Of Counsel.*

APRIL, 1922.

